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SUBJECT: NICARAGUA: INPUT FOR THE 2010 NATIONAL TRADE ESTIMATE

REF: 09 STATE 105824

TRADE SUMMARY

¶1. The U.S. goods trade deficit with Nicaragua was \$611 million in 2008, a decrease of \$103 million from \$714 million in 2007. U.S. goods exports in 2008 were \$1.1 billion, up 22.8 percent from the previous year. Corresponding U.S. imports from Nicaragua were \$1.7 billion, up 6.3 percent. Nicaragua is currently the 73rd largest export market for U.S. goods.

¶2. The stock of U.S. foreign direct investment (FDI) in Nicaragua was \$203 million in 2007 (latest data available), up from \$145 million in 2006.

¶3. Note: Data in paragraphs 1 and 2 are based on the 2009 National Trade Estimate and are to be updated by Commerce Department. End note.

IMPORT POLICIES

Free Trade Agreement

¶4. On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

¶5. The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into

¶6. In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

¶7. As a member of the Central American Common Market, Nicaragua agreed in 1995 to reduce its common tariff to a maximum of 15 percent. In response to rising prices, Nicaragua issued a series of decrees in 2007 to unilaterally eliminate, or reduce to 5 percent, tariffs on many basic foodstuffs and consumer goods. These decrees have been extended every six months and are currently in effect through December of 2009.

¶8. Under the CAFTA-DR, approximately 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty-free, with remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Nicaragua duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

¶9. Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Nicaragua duty-free. Nicaragua will eliminate its remaining tariffs on nearly all agricultural goods by 2025, including those on pork, rice, and yellow corn. Nicaragua will eliminate its tariffs on chicken leg quarters and rice by 2023 and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through expansion of a TRQ rather than by tariff reductions.

Nontariff Measures

¶10. Under the CAFTA-DR, Nicaragua committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Nicaragua also committed to ensuring greater procedural certainty and fairness in the administration of these procedures. All the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

¶11. The government levies a "selective consumption tax" on some luxury items that is 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer's price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

TECHNICAL BARRIER TO TRADE (STANDARDS, TESTING, LABELING, AND CERTIFICATION)

¶12. Nicaragua and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which

may facilitate trade.

¶13. Under the CAFTA-DR, Nicaragua reaffirmed its commitment to abide by the terms of the WTO Import Licensing Agreement. The Ministry of Health must provide a permit, renewable every five years, for the importation of any alcoholic beverage. U.S. industry has expressed concern about Nicaragua's proposed standards for alcoholic beverages distilled from sugarcane.

Sanitary and Phytosanitary Measures

¶14. During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss sanitary and phytosanitary (SPS) barriers to agricultural trade. Through the work of this group, Nicaragua committed to resolving specific measures affecting U.S. exports to Nicaragua. For example, Nicaragua now recognizes the equivalence of the U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

¶15. In February 2009, Nicaragua fully opened its market to all U.S. beef and beef products in line with the World Organization for Animal Health (OIE) guidelines for "controlled risk" countries for Bovine Spongiform Encephalopathy (BSE). The OIE categorized the United States as "controlled risk" for BSE in May 2007. Prior to February 2009, Nicaragua prohibited imports of U.S. deboned beef from cattle 30 months of age and older and bone-in beef from cattle of any age. Nicaragua based its import prohibition on the 2003 discovery of a BSE positive animal in the United States. Nicaragua and the United States are negotiating a protocol for the export of U.S. horses, goats, and sheep to Nicaragua.

¶16. In 2008, Nicaragua and the four other Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States had some concerns with these criteria and in May 2008 submitted comments to the five countries. In March 2009, the Central American countries amended the proposed microbiological criteria to exclude the regulations applied to raw poultry.

¶17. Law 291 regulates the importation of products of agricultural biotechnology. The law was modified in 2003 to establish the Commission on F

¶18. A bill on the "Prevention of Risks from Living Modified Organisms through Molecular Biotechnology" has been passed by the National Assembly but not yet signed into law. It would strengthen science-based principles in the analysis conducted by CONAGREN.

¶19. Nicaragua is a signatory of the Cartagena Protocol on Biosafety. As mandated by the protocol, Nicaragua requires that agricultural goods containing living modified organisms (LMOs), unless they include 95 percent or greater non-LMO content, be labeled to indicate that they "may contain" LMOs.

GOVERNMENT PROCUREMENT

¶20. Under the CAFTA-DR, procuring entities must use fair and transparent government procurement procedures, including advance notice of purcha

¶21. Nicaragua is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

¶22. Nicaragua does not provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (e.g., the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Nicaragua must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

¶23. The CAFTA-DR provides improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos as well as further deterrence of piracy and counterfeiting.

¶24. In 2009, the Nicaraguan Government focused on improving interagency cooperation on IPR enforcement against copyright and trademark infringement. The Nicaraguan Government also improved its cooperation with private industry to combat IPR crimes in some areas, such as identifying vendors of pirated goods and offering training to Nicaraguan police officers. During the first seven months of 2009, the Nicaraguan police reported having seized 4,327 backpacks that included designs infringing on a U.S. company's trademark rights. The police also seized 6,464 blank CDs. The monetary value of the seized goods is approximately \$232,406. Despite these improvements, Nicaraguan efforts to enforce IP law remain limited. For example, the Nicaraguan government did not make any IPR-related arrests or convictions in 2009.

SERVICES BARRIERS

Financial Services

¶25. The CAFTA-DR ensures that U.S. financial services companies have full rights to establish subsidiaries, joint ventures, or bank branches, and U.S. insurance suppliers enjoy full rights to establish subsidiaries and joint ventures, with a phase-in provision for branches of financial services companies. Nicaragua allows U.S. based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation, and transport insurance; in addition to other insurance services.

Other Services Issues

¶26. Under the CAFTA-DR, Nicaragua granted U.S. services suppliers substantial access to its services market, including financial services, su

¶27. Under the CAFTA-DR, Nicaragua is committed to opening its telecommunications sector to U.S. investors, service providers, and suppliers. In practice, the sector lacks a regulatory framework that would encourage free competition. Enitel, the former state telephone company now owned by a Mexican investor, operates all

fixed lines and splits the mobile phone market with a Spanish firm. In 2006, the Supreme Court blocked an effort by TELCOR, the telecommunications regulator, to make switching infrastructure owned by Enitel available to other fixed and mobile phone operators. In widely criticized process, TELCOR awarded spectrum in September 2009 to a company with ties to senior government officials. The executive branch has proposed legislation that would strengthen TELCOR's regulatory capacity and improve competition among telephone companies. However, some have expressed concern that it would allow the government to introduce political factors in the renewal of broadcast licenses.

INVESTMENT BARRIERS

128. The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Nicaragua. Under the Agreement, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Nicaragua on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

129. During the 1980s, the Sandinista government confiscated some 28,000 real properties. Since 1990, thousands of individuals have filed claims for the return of their property or to receive compensation. Compensation is most commonly granted via low-interest bonds issued by the government. As of October 2009, the Nicaraguan government had settled more than 4,600 U.S. citizen claims. A total of 563 Embassy registered U.S. claims remain outstanding. The United States continues to press the Nicaraguan government to resolve outstanding claims.

In 2009, the government cancelled a provisional license for electricity generation granted to a wind energy consortium that included a U.S. partner. The government claimed the consortium had violated the terms of its license by beginning construction. After a six-week delay, the government granted a permanent license, and the consortium resumed construction. In 2008, the government restored four oil exploration concessions to two U.S. companies. These companies renegotiated some of the terms of concession agreements, which had been tendered in an otherwise transparent manner, after the government ruled they were invalid in 2007 because autonomous regional governments had not been properly consulted. In 2007, the Nicaraguan government seized, via judicial order, several petroleum storage tanks owned by a U.S. company, claiming that the company had not paid value added taxes associated with the importation of crude oil, even though crude oil is not subject to this tax. In a negotiated settlement, the government subsequently purchased the storage tanks from the company and paid for the use of the tanks during the seizure.

ELECTRONIC COMMERCE

130. The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Nicaragua has committed to provide nondiscriminatory treatment to U.S. digital products, and not to impose customs duties on digital products transmitted electronically.

OTHER BARRIERS

131. U.S. companies have raised concerns that Nicaragua's legal system is weak, cumbersome, and subject to political influence and that many members of the judiciary, including those at high levels, are believed to be corrupt. Enforcement of court orders can be erratic and subject to non-judicial considerations. Courts have granted orders (called an "amparo") to protect criminal suspects of white collar crime by enjoining official investigatory and enforcement actions indefinitely. Foreign investors are not specifically targeted but often find themselves at a disadvantage in any dispute with Nicaraguan nationals.

Law 364

132. U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactiv

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